

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Darryl Simmons,)	
)	C/A No. 0:09-1979-MBS
Petitioner,)	
)	
vs.)	
)	ORDER
Warden/FCI Estill,)	
)	
Respondent.)	
_____)	

Petitioner Darryl Simmons is an inmate in custody of the Bureau of Prisons who currently is housed at FCI-Estall in Estall, South Carolina. Petitioner filed the within action on July 28, 2009. The filing was construed as an action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 397 (1971). However, upon request of Petitioner, the case was changed to a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. The Magistrate Judge reviewed the petition pursuant to the provisions of the Antiterrorism and Effective Death Penalty Act of 1996 and applicable precedents. On April 6, 2010, the Magistrate Judge issued a Report and Recommendation in which she noted that Petitioner's claims of unconstitutional conditions of confinement are not cognizable under § 2241. The Magistrate Judge further noted that, even if Petitioner could avail himself of § 2241, the petition would be subject to dismissal for failure to exhaust his administrative remedies. Accordingly, the Magistrate Judge recommended that the § 2241 petition be summarily dismissed. The Magistrate Judge further recommended that a motion to dismiss Petitioner's Bivens claims filed by Respondent on December 18, 2009 be terminated as moot. No party filed objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. The petition for writ of habeas corpus is dismissed without prejudice. The Clerk of Court is directed to terminate motion to dismiss the Bivens action (Entry 25) as moot.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

April 29, 2010.